

# **Town of Scituate**

## ***Shellfish Aquaculture License Regulations***

### ***“License Program”***

#### **1.0 Prologue**

The Town of Scituate (“Town”) advocates the orderly development of private aquaculture that is complementary to the continuing development of the Town's shellfishery. In support of this goal, the Town may issue Shellfish Aquaculture Licenses (the “License” or “Licenses”). Such License shall be issued by the Town Board of Selectmen (the “Licensing Authority” or “BOS”). These Regulations govern licenses issued for the exclusive use of a designated area for aquaculture and do not govern permitting for general commercial or recreational shellfish harvesting.

In determining whether to grant a license, the Town shall protect and preserve existing fisheries and minimize the impact on other uses of the marine environment with a special consideration for existing uses. The right of public navigation through a license area shall not be infringed upon except in areas containing structures that are approved and properly marked according to these Regulations.

#### **2.0 Definitions**

For the purposes of these Regulations, unless the context otherwise requires, the following words shall have the following meanings:

**Aquaculture** – the rearing of aquatic animals for food or the cultivation of aquatic plants for food.

**Downweller-** a shellfish nursery system where water flows down through the seed, pressing it against a screen. A Downweller is capable of handling seed otherwise too small for an upweller system (see Upweller).

**Gear-** included but not limited to seed, any equipment used to house seed, vehicles including boats, trucks and refrigerated containers, coolers, ice and fuel. Costs associated with labor are not included.

**License Area** – the area shown on the Licensee’s plan submitted with the application to the extent the area was approved by the Town for the license, including but not limited to the Exclusive Use Area.

**Licensing Authority-** Town of Scituate Board of Selectmen.

**Resident of the Town of Scituate**– any person who maintains a bona fide domicile in the Town of Scituate for at least twelve (12) consecutive months prior to the date of any application made hereunder, as described further in Section 4.3 below.

**Scituate Oyster-** the marketing name for all oysters harvested from Scituate waters. For example, Scituate Oyster by XYZ Oyster Company.

**Shellfish** – includes clams, conchs, limpets, mussels, oysters, periwinkles, quahogs, razor clams, scallops, sea clams, sea quahogs, sea scallops and winkles, in accordance with M.G.L. c. 130, § 1.

**Shellfish Harvesting** – includes all the activities of the digging or taking of shellfish, sea worms, or eels up to and including the landing of same, pursuant to M.G.L. c. 130, §§ 52 and 100D.

**Upweller-** A secondary nursery system where water continually flows upward. The upward force of the water levitates the shellfish allowing more access to food.

### **3.0 Authority**

- a) The following Regulations concerning shellfish aquaculture licenses are adopted pursuant to M.G.L. c. 130, §57. Violation of any of the requirements in these Regulations subjects the holder of a license (“Licensee”) to review and possible revocation of a license at the discretion of the licensing authority.
- b) The Licensing Authority reserves the right to review or amend the License Program and to amend these Regulations at any time. Any such amendment(s) shall apply to all Licenses, unless stated otherwise in the amendment(s).
- c) If any of these Regulations is declared invalid by any court or tribunal or competent jurisdiction, the remaining provisions of these Regulations shall not be affected.

### **4.0 Application**

The licensing authority shall consider applications for Licenses based on merit, within the limitations of available land, water space and site access. All license applications shall be submitted, with the proper fees, to the BOS Office for review. A License shall be valid for an initial two-year period. Licenses may be renewed in accordance with the terms of these regulations.

#### **4.1 Fees**

- a) There shall be a non-refundable **Application Fee** of **three hundred dollars (\$300.00)**.
- b) Once a license has been granted, an **Annual Administrative Fee** shall be due in the amount of **twenty-five dollars (\$25.00)** per acre, or part thereof, covered by the License. If the fee is not paid within six (6) months of becoming due, the License shall be forfeited pursuant to M.G.L. c. 130, § 64.

- c) Once a License has been granted, an **Annual Reporting Fee** shall be due in the amount of **One Thousand dollars (\$1,000)** per License.
- d) Once a License has been granted, an **Annual Inspection Fee** shall be due at the time of inspection in the amount of **Two Hundred dollars (\$200)** per license.

#### **4.2 Application Process**

- a) The completed application shall be submitted to the Scituate Shellfish Advisory Committee Email address ([Shellfish@ScituateMA.gov](mailto:Shellfish@ScituateMA.gov)) or hand delivered to the BOS office c/o Shellfish Advisory Committee.
- b) The Application shall be on forms provided by the Shellfish Advisory Committee and approved by the BOS, and shall include:
  - 1. A site plan including the latitude and longitude of corners and a map of the proposed area to be covered by the license. The map shall describe the proposed licensed area, including the waters, flats, or creeks sought to be covered.
  - 2. Town of Scituate Commercial Shellfish License Application.
  - 3. The Applicant shall demonstrate, that the Applicant has the right to access and use the land that is the subject of the Application. The Application shall include a specific analysis of the land that will be subject to the License, including the limits of that land (extreme low water line, mean low water line, etc.), the right of the Applicant to use that land. The Applicant shall include a copy of the deed or other suitable proof of ownership or other authorization.
- c) No License shall cover an area greater than two (2) acres. Acres do not need to be contiguous.
- d) All applications and attachments submitted to the Town shall become the property of the Town of Scituate upon submission.
- e) The Shellfish Advisory Committee shall review the Application package for completeness and shall notify the Applicant if any portion of the application is missing or deficient.

#### **4.3 Notice of a Public Hearing**

- a) Following receipt of a completed Application, the Licensing Authority shall establish a public hearing date. Pursuant to M.G.L c. 130 Section 60, no license shall be granted, transferred, amended, or renewed until after a public hearing, due notice of which has been posted in three (3) or more public places, and published in a newspaper, if any, in the town where the territory described in the application is located. Both posting and publication shall be done at least ten (10) days before the time fixed for the hearing, stating the name and residence of the applicant and, in the case of a transfer, the

transferee, the date of the application, and the location, area, and description of the proposed or currently licensed area.

- b) The Licensing Authority shall notify the Applicant at least fourteen (14) days prior to the public hearing of the time, date, and place of the hearing.
- c) The Applicant shall be required to provide notice of the hearing to all abutters to the license area (as certified by the assessor's office) and all licensees within five hundred (500') feet of any point along the perimeter of the requested licensed area by certified mail, return receipt requested. The notice to abutters and licensees must be made at least ten (10) days prior to the public hearing date. The U.S. Postal Service Receipt for Certified Mail for each notice shall be submitted to the Licensing Authority at or before the time of the hearing.

#### **4.4 Application Review and License Granting**

- a) Upon validating that an Application is complete, the Shellfish Advisory Committee shall review and comment on an application. In approving or denying the Application, the Licensing Authority may consider, but is not bound by, comments from the Shellfish Advisory Committee
- b) Licenses shall be granted, renewed, amended, transferred, or denied by the Licensing Authority in a written decision issued within sixty (60) days after receipt of the complete written Application, unless an extension is granted by written agreement of the Applicant.
- c) If, during the review process, the Shellfish Advisory Committee or the Licensing Authority determines that it needs additional information in order to properly review the Application, the Shellfish Advisory Committee or Licensing Authority may request such additional information from the Applicant and may request that the Applicant agree to extend the hearing time so that the additional information can be generated and considered.
- d) At the option of the Licensing Authority, the Applicant may be required to pay for the legal and technical fees incurred by the Licensing Authority to review any Application, including one for renewal, amendment, or transfer.
- e) After review of the Application and a public hearing, the Licensing Authority may grant, renew, amend, or transfer a license, with or without conditions, or the Licensing Authority may deny the Application.
- f) In reviewing an Application for a new or amended license, or for license renewal or transfer, the licensing authority may grant the Application only if the Applicant demonstrates the following:
  - 1. The shellfish aquaculture plan proposed by the Applicant meets all the requirements of these Regulations and the provisions of M.G.L. c. 130;

2. The plan proposed by the Applicant is designed to cause no substantial adverse effect on shellfish or other natural resources of the Town and proposes a benefit to the Town;
  3. The issuance of a License will not impair the private rights of any person; and
  4. The issuance of a license will not materially conflict with the purposes of these Regulations to protect and preserve the existing fisheries and minimize impact on other uses of the marine environment.
- g) Licenses shall only be issued for land more than one hundred and fifty (150') feet from the mean high-water line. This requirement, however, shall not apply in areas that are separated from the shoreline or mean high water line by guzzles or channels containing water at mean low water.
  - h) No License shall permit a licensee to impair or to materially obstruct navigational waters.
  - i) The License, if issued, shall describe the latitude and longitude of corners of the waters, flats, or creeks covered by the license.
  - j) All licensing decisions by the Licensing Authority are final.
  - k) Within one year of approval of the License, the Applicant shall complete the application review process as required by any applicable federal and state authorities, or the license approval will be revoked. Upon request, the licensing authority may extend the time period for this review. However, in no case shall a license be granted for any areas which are at the time of inspection, or which were within two years prior thereto, closed for municipal cultivation under provisions of M.G.L. c. 130, § 54.
  - l) Prior to operation, the Applicant will be required to have the licensed area surveyed by a registered engineer or a registered surveyor. A recorded plan defining the boundaries of a license area, together with a full specific description of the licensed area shall be submitted to the Harbormaster before the issuance of the License. Upon completion of the plan, the Applicant shall have the boundaries marked as prescribed by these Regulations.
  - m) The granting of a License shall be conditional upon obtaining all licenses, approvals, and/or permits required from all federal, State and local authorities. All licenses, approvals, and/or permits required to use a license shall be appended to a License and filed with the BOS's Office at the time of issuance of the License.
  - n) The Licensing Authority may condition the grant of a license on compliance with any conditions that another authority deems necessary and appropriate for a given location or operation, including species to be propagated and the source and movement of seed shellfish.

#### **4.5 Application Eligibility Requirements**

- a) Licenses shall only be issued to domiciled residents of the Town of Scituate who are eighteen (18) years or older.
- b) All local tax obligations must be paid in full.
- c) Applicants can prove to the satisfaction of the Licensing Authority that they are bona fide domiciled residents of the Town and have been domiciled within the Town for at least twelve (12) consecutive months prior to the date of application.
- d) Written proof of residency is required. Such written proof may include address of residence, the time during which the Applicant has resided at said address, and evidence of ownership or lease of said residence. Applicant may also be required to provide evidence of the location of automobile registration, address contained on the driver's license, and other relevant proof that Scituate is the domicile of the applicant. The Licensing Authority reserves the right to waive the residency requirement. Should aquaculture be approved in Briggs Harbor, the BOS reserves the right to issue license(s) to Cohasset Residents.
- e) Proof of insurance shall be submitted to the Shellfish Advisory Committee prior to engaging in any aquaculture activity on the site.
- f) Applicants shall disclose all License holders in Scituate with whom the Applicant has business or family relationships.
- g) A licensed area shall be forfeited if the licensee ceases to be a resident or otherwise ceases to comply with these Regulations. The licensing authority shall review the residency of each license holder whenever the License is presented for approval, review, or renewal.

#### **4.6 Renewal of Aquaculture Licenses**

- a) The initial term of a license shall be two (2) years from date of final issuance.
- b) Provided appropriate effort has been demonstrated, as required in Section 6.0 through Section 6.2, the first renewal of a license shall be for five (5) years from date of issuance of the renewal.
- c) Renewals may be requested and acted upon only during the twenty-four (24) months immediately prior to the expiration date of the current License. The renewal period shall begin on the expiration date of the existing License.

#### **5.0 License Limitations**

The Licensing Authority considers aquaculture space a limited resource with limited availability and there is a need to regulate and protect aquaculture space throughout regulation. The licensing authority imposes grant limitations in order to adequately manage a limited resource.

### **5.1 Limit on Individuals who can use One License**

- a) The original licenses may be issued to up to two (2) individuals, 18 years of age or older, meeting the requirements set forth in 4.6.
- b) The Licensing Authority will not recognize more than two (2) individuals as Licensees on any one License.

### **5.2 Use of License by Non-Licensees**

- a) All individuals authorized by a Licensee to work under the License in the Licensee's absence, shall be registered with the Shellfish Constable.
- b) Licensees are responsible for the actions of all individuals working on the Licensee's License.

### **5.3 Limit on Size of License**

No Licensee shall have use of, more than two (2) acres, regardless of the number of Licenses a person operates under.

### **5.4 License Granting Suspension Term**

- a) The Licensing Authority may suspend the granting of additional licenses upon a determination that the granting of additional licenses will not further the purposes of these Regulations ("LGST").
- b) The Licensing Authority may deny all applications for new Licenses that are received after a LGST has been declared.
- c) The Licensing Authority may grant an application to transfer, amend, or renew a license during a LGST, if the application otherwise complies with these Regulations.
- d) Any application approved during a LGST, shall be added to the Aquaculture Licensing Prequalified List of Applicants (the "Prequalified List").
- e) If an existing License becomes available during a LGST, the Licensing Authority may make such license available to member of the Prequalified List

### **5.5 Prequalified List**

- a) The Shellfish Advisory Committee shall manage the Prequalified List.
- b) The Prequalified List shall include each approved applicant.
- c) In order to remain on the Prequalified List, an approved applicant shall pay a twenty-five dollar (\$25.00) annual fee on or before January 15<sup>th</sup> to the Shellfish Advisory Committee.
- d) It is the applicant's responsibility to provide the Licensing Authority with current contact information.
- e) The Shellfish Advisory Committee shall inform the public of the beginning and end of a LGST. Applicants on the Prequalified List shall be offered the available license in writing in accordance with their position on the Prequalified List.
- f) Any applicant on the Prequalified List shall have ten (10) days from the date of the notification to accept or deny the opportunity to obtain the license. If an Applicant elects not to obtain any available license, the License shall be made available to the next applicant on the Prequalified List.
- g) An applicant on the Prequalified List must renew their application on or before January 15<sup>th</sup> in order to remain in their position on the prequalified list. Failure to comply with this requirement shall result in removal from the Prequalified List. The Prequalified List shall be revised and posted on or before February 1<sup>st</sup> of each year online and in the Harbormaster's Office.
- h) No applicant on the Prequalified List may transfer, bequeath, or otherwise assign his/her position on the Prequalified List.

## **6.0 Evidence of Productivity**

As described further below, in order to determine minimum levels of investment and production, an annual report must be filed by each licensee throughout the term. In addition, an annual review of each license will be conducted throughout the term of the license.

### **6.1 Minimum Levels of Investment and Production**

- a) During the first, second and third year after the date of issuance of the license a minimum of \$10,000 per acre shall be spent on seed and gear. This shall be verified through receipts of seed and gear purchases.
- b) Any licensed area that is less than one acre shall be prorated.
- c) During the fourth year and every year thereafter, there shall be a minimum production of an average of \$10,000 worth of product per acre, or prorated for a portion thereof, from the practice of aquaculture on the licensed area.



- d) Investment and production shall be demonstrated by the annual grant report, and, if so, requested by the licensing authority, copies of transaction receipts or other acceptable documentation.
- e) Failure of the licensee to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area.
- f) The Licensing Authority shall have the right to waive the minimum production requirements when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

## **6.2 Annual Report**

- a) Pursuant to M.G.L. c. 130 § 65 every licensee shall submit on oath on or before February 28 in each year to the licensing authority a report of the total number of each kind of shellfish planted, produced, or marketed during the preceding year.
- b) An annual review of each License will be conducted by the Shellfish Constable in order to determine whether minimum levels of investment and production was made of the license during the previous year.
- c) If by the end of the third year, a licensee cannot show substantial use of the licensed area during the preceding year, his/her license will be forfeited, unless the licensee can demonstrate to the Licensing Authority that the licensee has made diligent efforts during the license term and that some substantial progress is imminent.

## **7.0 Non-Commercial Aquaculture Research and Education Projects**

- a) The Licensing Authority may issue a license to an individual or institution proposing to conduct aquaculture research and education projects. Projects shall be environmentally appropriate and in the best interest of the Town of Scituate.
- b) Applicants shall provide a project plan including all aspects of the management and operations of the project to the licensing authority. Applicants shall also describe how the project is environmentally appropriate and in the best interest of the Town.
- c) Licensees shall provide yearly reports regarding research and education to the licensing authority.
- d) Non-Commercial licensee applicants may request fee exemptions for all fees except for the fee in Section 4.2.b Administrative fee, Twenty-five (\$25).

## **8.0 Rights Granted Under a License**

- a) Unless otherwise conditioned, a License shall authorize the licensee at all times of the year, in or upon the licensed area of the coastal waters of the Commonwealth, tidal flats, or land under coastal water to:
  - 1. Plant and grow shellfish, bottom/off-bottom culture;
  - 2. Place shellfish in or under protective devices affixed directly to the tidal flats or land under coastal waters, within boxes, trays, pens, or nets, in compliance with these Regulations;
  - 3. Harvest and take legal shellfish; and
  - 4. Plant cultch for the purposes of catching shellfish seed; and grow shellfish by means of racks, rafts, or floats.
- b) The Licensing Authority shall permit, as a condition of the license, such public uses of said waters as are compatible with the aquacultural enterprise.

### **8.1 Designated Aquaculture Float Area and Federal Anchorage**

- a) Those granted a license under these Regulations may also apply for a designated aquaculture float, as set forth in M.G.L. c. 102 and pursuant to the following terms:
  - 1. The Designated Aquaculture Float area shall be approved by the Harbor Master under M.G.L. c. 91 §10a and shall be for aquaculture related activity only;
  - 2. Float Applicants shall provide proof of a valid aquaculture lease holder with the application;
  - 3. Approved float applicants must obtain an annual mooring permit (or renewal) for the float location;
  - 4. Permitted docks and floats shall be issued based on mooring space availability near the growing area; and
  - 5. The Applicant shall abide by the Scituate Rules and Regulations on Moorings, Permits and Mooring Wait Lists.
- b) Aquaculture Float applicants shall submit a copy of the approved shellfish license/grant to the Harbormaster for approval and then to the Board of Selectmen for filing annually in the month of November, by a filing date set and publicized by the Board of Selectmen annually in October.
- c) As required by M.G.L. c.130, § 57, the applications shall describe the proposed activity and purpose of the floats, including the species of shellfish to be processed on the float and the float size and design.

- d) After receipt of all applications, the BOS shall hold a public hearing as required by M.G.L. c. 130, § 57 and 60 to issue individual licenses to the float applicants.
- e) After the grant of float licenses by the BOS, the Town shall post a public notice every November, as described in M.G.L. c. 130, §§ 57 and 60, that includes (at least):
  - 1. The description of the area “Designated Aquaculture Float Area” with (corner coordinates);
  - 2. The float mooring location assignment and permit number;
  - 3. Docks and floats permitted under M.G.L. c. 91 § 10a shall be numbered and locations of docks and floats shall be maintained in a database.
- f) The complete list of Applicant’s names, address and corresponding float mooring location assignments, corresponding permit numbers and coordinates.
- g) All float licenses granted by the Harbormaster are issued with the following management conditions, plus any others deemed appropriate by the Board during the licensing process:
  - 1. The float may only be used for growing and sorting seed, processing and holding product, and limited storage of aquaculture gear;
  - 2. Shellfish moved between the float and shore and vice/versa shall be tagged;
  - 3. No shell material or debris may be discarded overboard at any time;
  - 4. Licensee shall not use the bottom or tidal flat for any purpose other than the mooring of authorized floats;
  - 5. Licensee may only handle shellfish on the floats between the hours of ½ hour before sunrise and ½ hour after sunset.

## **8.2 Private Property Rights**

- a) Licenses granted under these Regulations do not convey property rights. Any entry on or over or use of licenses upon privately owned property requires permission of the property owner. It shall be the licensee’s responsibility to obtain such permission.
- b) Pursuant to M.G.L. Chapter 130, Section 57, a license does not impair the private rights of any person. A license does not authorize injury to private property or invasion of private rights.

- c) The granting of a license is not a determination of title or ownership of a licensed area.

### **8.3 Compliance with Federal, State and Local Requirements**

- a) Approval of a license shall be subject to all federal, state, and local laws and regulations, as in force and as amended from time to time.
- b) Compliance with such laws and regulations is required as a condition of a license.
- c) Failure to comply with applicable federal, state, or local regulations shall be cause to revoke a license.
- d) The licensee is expected to be familiar with applicable laws and regulations.

### **8.4 Extent of License Rights**

- a) A licensee, or their legal representative, in accordance with the terms set forth in these Regulations, shall have during the term of a License the exclusive right to take all shellfish therefrom during the time therein specified pursuant to M.G.L. c. 130, §§ 57 and 63; provided that this paragraph shall not be construed to authorize any taking prohibited by law.
- b) A licensee may also maintain a float, barge, or boat (hereinafter “float”) for processing purposes within the same growing area of the bay as the Licensee’s License Area. The location and size of such float shall be determined and authorized annually by the Harbormaster and shall be for the exclusive use of the Licensee conducting permitted tasks related to the culture and harvest of shellfish. When used, the float shall be part of the licensee’s License Area and shall not be considered “off site.”
- c) Any license, amendment, transfer, or renewal granted under these Regulations is revocable as described herein and does not confer any property rights on the licensee.

### **8.5 No Right to Sublease**

Licenses are granted to and for the exclusive use of a licensee. Assignment or subleasing of the licensed area or portion thereof is prohibited.

### **8.6 Right to Transfer**

- a) A license may be transferred with the approval of the Licensing Authority to any immediate family member defined in 8.7 (b) who satisfies all required conditions as defined in the Town of Scituate Shellfish Aquaculture Grant Regulations.
- b) Whether or not so transferred, may, within two years before the expiration of its then current term, be renewed from the expiration of the original term.

- c) The terms of a license shall, so far as apt, apply to a transfer or a renewal thereof, unless otherwise modified by the Licensing Authority.

### **8.7 Right to Inherit**

- a) Any License issued under the provisions of M.G.L c. 130, § 57 shall, upon the death of the licensee, continue in full force and effect for the remainder of the unexpired term of the License or one year, whichever is longer and may be used by an immediate family member.
- b) For purposes of this section, the term “Immediate Family Member” shall mean a spouse, son, daughter, mother, father, brother or sister of a deceased licensee.
- c) Within 90 days of the death of a License holder, the deceased family or estate shall apply to the Licensing Authority for a transfer of the license to the name of an immediate family member and shall submit updated insurance information to the Licensing Authority.

### **8.8 Marking of Boundaries**

- a) Upon receipt of a license, a licensee shall cause the territory covered thereby to be plainly marked by monuments, marks or ranges and shall mark the license boundaries (corners) with stakes.
- b) Each boundary stake shall be a plastic pole with a diameter no greater than 1.5 inch, not higher than eighteen (18”) inches above the surface of ground in the Licensed Area with a painted yellow sign, measuring 8” x 10” with two (2”) inch block black lettering and bearing the words “LICENSE NO. \_\_\_\_” attached thereto. Signage shall be visible at mean low tide only.
- c) Any licensed rafts or other floatation devices shall be marked with plastic poles with a sign attached having the same terminology as section 8.8(b) above. Silver reflector paint or tape shall be used on the pole and signage in a manner as to be visible during hours of darkness.
- d) Any such boundary marker shall be subject to the inspection and approval by the Shellfish Constable and Harbormaster. The requirements of this Section shall not conflict with M.G.L. c. 130 or any requirements from the Army Corps of Engineers. If such conflict exists, the requirements of state or federal law shall prevail over the requirements of this Section.

### **8.9 Marking and Removal of Equipment**

- a) Structures that are used by the licensee on any of the licensed territory shall be marked as follows:

1. If any underwater hard structures or devices are used in the licensed territory, the boundaries of all such hard structures and/or devices shall be plainly marked with twelve (12") inches orange sphere buoys at least at each corner of the acre plot to be attached and anchored with a thirty-six (36") inch length of 1/8 inch tire cord from the top of any hard structure or device.
  2. Each boundary corner of the area of hard structures and/or devices shall be marked with two six (6") inch orange sphere buoys as mandated above.
  3. Each six (6") inch orange sphere buoy shall be plainly marked in white on two sides with the uniform state waterway marking system (symbol) for: "DANGER!"
  4. All gear, tackle and other equipment shall be indelibly marked with the license number conspicuously placed on each of piece of equipment.
- b) If gear, tackle, or other equipment (collectively "Equipment") leaves the Licensed Area for any reason and is deposited on the shore, beaches or flats, whether public or private, the licensee must recover the Equipment within seven (7) days from the time of its deposit; provided, that a licensee in so doing does not commit any unreasonable or wanton injury to the property where the equipment is deposited. If the licensee does not recover the Equipment within seven (7) days, the Town shall recover the Equipment, at the expense of the licensee.
- c) When a License is terminated for any reason, the licensee shall remove all Equipment from the Licensed Area within thirty (30) days of the license termination date. Any and all Equipment not removed within thirty (30) days may be removed by the Town at the expense of the licensee and shall become the property of the Town if the licensee does not take possession of the equipment immediately after removal and payment of costs to the Town.
- d) No structure or device (except marking buoys, and as otherwise noted in this section) shall protrude more than eighteen (18") inches above the substrate which, for the purposes of these Regulations, refers to the surface or material on or from which an aquaculture organism lives, grows, or obtains its nourishment. All structures shall be readily removable. Shellfish may be rafted only in those areas so specified in a License. Shellfish rafting in areas outside the limit of any raft area shall be prohibited.

#### **8.10 Set- Backs and Buffer Areas**

- a) No activity shall occur within fifty (50') feet from beds of eelgrass, widgeon grass, or saltmarsh, and no such vegetation shall be damaged or moved.
- b) A buffer area of fifty (50') feet shall be maintained between Licensed Areas. Buffer areas are open to anyone and everyone on an equal basis and shall be maintained for access and retrieval of product and equipment.

## **9.0 Enforcement**

The Shellfish Constable shall administer and enforce these Regulations and all laws relating thereto.

## **9.1 Prohibitions**

- a) Pursuant to M.G.L. c. 130, § 68, no person shall dig, take, or carry shellfish or shells between one-half hour after sunset and one-half hour before sunrise, by any method whatever, from any waters, flats, or creeks as to which a license under these Regulations has been granted. A licensee violating this Section shall forfeit his/her License and all shellfish remaining on the licensed area.
- b) All shellfish transferred to the Licensed Area shall be obtained from hatcheries or sources certified by the DMF.
- c) All shellfish harvesting shall be by hand without the assistance of power unless the use of mechanical power is approved by the Shellfish Constable and the Division of Marine Fisheries, on a case-by-case basis.

## **9.2 Revocation of License**

- a) Failure of the licensee to comply with the provisions of any applicable rule, regulation, bylaw, statute, or law may result in revocation of the License by the Licensing Authority.
- b) The Licensing Authority shall conduct a public hearing prior to the revocation of any License.

## **9.3 Authority to Inspect**

- a) The Shellfish Constable may inspect the Licensed Area at any reasonable time deemed necessary and the inspection may include any and all structures or containers on the Licensed Area.
- b) The Town may take samples of any species held in the Licensed Area for the purpose of determining their species, certifying their source, testing for disease, and in order to assure that the activities taking place are in conformity with the License and all requirements of law.

## **9.4 Changes to the License**

- a) No change to the terms of a License and all additional material investments, including but not limited to, rafts, floats, racks, cages, trays, nets, etc., shall take affect without written approval by the Licensing Authority.

- b) The Licensing Authority shall determine if the proposed changes are significant, and therefore, require further review. If the changes are found to be significant, the Licensing Authority shall hold a public hearing to review the proposed changes, public notice of which shall be given as described in these Regulations.
- c) A significant change shall include, but not be limited to, any amendment of a license which may affect the navigable waters; which changes the form of aquaculture or the category of aquaculture performed by the licensee; or which may impact the marine environment.
- d) Upon review of the proposed changes, the Licensing Authority may approve or deny the proposed changes, such changes are subject to certification by the Division of Marine Fisheries prior to taking effect.

### **9.5 Town Record Requirements for Licenses Granted**

- a) The Shellfish Advisory Committee, shall keep plans showing all Licensed Areas and , a record of each license granted and transfers or renewals thereof, the name and address of all licenses and transferees, the dates of granting the license, transfer, renewal, and expiration thereof, and a copy of the description of the Licensed Area, in a book devoted solely to such records. In addition, the Shellfish Advisory Committee shall make records available online.
- b) Each license, transfer, or renewal thereof, shall forthwith after the granting thereof be transmitted by the Licensing Authority to the Shellfish Advisory Committee, who shall enter the name in a book.
- c) The records shall be open for public inspection at all reasonable times.

### **10.0 Liability of the Town**

The Licensee shall not hold the Town liable for any damages or injury to the Licensed Area, including damages or injury due to any dredging or improvements done by or on behalf of the Town. If at any time it becomes necessary for the Town to dredge and/or otherwise accomplish maintenance by dredging on or within the vicinity of the Licensed Area to improve or maintain channels for navigation, or for any other public purpose, a licensee agrees not to obstruct the dredging plans and operations. The Town shall provide a licensee ninety (90) days' notice prior to commencement of any dredging operation. Before, during and after dredging operations are completed and if, in the opinion of a licensee, the Shellfish Constable, and the State Marine Biologist, the bottom conditions are considered temporarily unsuitable for planting or maintaining shellfish, immediate and temporary permission for relocation of a licensee's stock shall be reviewed by the Licensing Authority. If shellfish need to be relocated under these conditions, they shall be relocated at the expense of the licensee and subject to the issuance of a permit by the Division of Marine Fisheries.



## **11.0 Insurance Requirements**

The Licensee shall hold at least one million (\$1,000,000) in liability insurance per license acre and the licensee shall name the Town of Scituate, with an address of 600 Chief Justice Cushing Highway, Scituate, MA 02066 as an additional insured.

## **12.0 Fines**

- a) Pursuant to M.G.L. c. 130, § 66, the penalty for destroying or interfering with the boundaries of a shellfish License is a twenty dollar (\$20.00) fine. for each offense and/or the possible revocation of the license or both.
- b) Pursuant to M.G.L. c. 130, § 67, the penalty for taking shellfish from a licensee's Shellfish Area without permission or authority to do so is a twenty dollar (\$20.00) fine and/or one-month imprisonment for the first offense, or a fifty dollar (\$50.00) fine and/or six month imprisonment for the second offense for each offense and/or the possible revocation of the license or both.
- c) The penalty for any other violation of these Regulations shall be a fine not less than twenty-five dollars (\$25.00), nor more than two hundred dollars (\$200.00) for each offense and/or the possible revocation of the license or both.

**Adopted by the Town of Scituate Board of Selectmen:**

**12/03/19**